

APPEAL NO. 171910
FILED SEPTEMBER 25, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 22, 2017, with the record closing on June 7, 2017, in (city), Texas, with (administrative law judge (ALJ)) presiding as (ALJ).¹ The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on (date of injury); (2) the claimant's horseplay was not a producing cause of the claimed injury and the respondent (carrier) is not relieved of liability for compensation; (3) the claimed injury was not caused by the claimant's willful intention and attempt to injure himself and the carrier is not relieved of liability for compensation; (4) the claimed injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons not related to the employment and the carrier is not relieved of liability for compensation; and (5) the claimant did not have disability resulting from the claimed injury.

The record reflects that the claimant did not appear at the CCH on May 22, 2017, nor did he respond to the ALJ's letter dated May 23, 2017, affording him the opportunity to respond within 10 days and request that the hearing be reconvened in order for him to present evidence concerning the disputed issues and to show good cause for his failure to attend the CCH. Having received no response to her 10-day letter, the ALJ issued her decision on June 16, 2017.

The claimant appeals the ALJ's determinations arguing that his failures to attend the May 22, 2017, CCH and to respond to the ALJ's 10-day letter dated May 23, 2017, are the result of his failure to receive notices of the CCH or the ALJ's 10-day letter. The claimant further complains of the ALJ's determinations that he did not sustain a compensable injury on (date of injury), and that he did not have disability resulting from a compensable injury. The carrier argues that the appeal is untimely and that the ALJ's determinations are supported by the evidence and should be affirmed.

DECISION

Reversed and remanded.

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

Section 410.168(f) provides that the Texas Department of Insurance, Division of Workers' Compensation (Division) shall send a copy of the ALJ's decision to each party. 28 TEX. ADMIN. CODE § 142.16(d) (Rule 142.16(d)) provides that the Division shall furnish a copy of the ALJ's decision no later than seven days after the decision is filed with the Division. Section 410.202(a) provides that to appeal the decision of an ALJ, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the ALJ is received from the Division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202(d) provides that Saturdays and Sundays and holidays listed in Section 662.003 are not included in the computation of the time in which to file an appeal or a response. Rule 143.3(d), effective December 13, 2009, provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of deemed receipt of the ALJ's decision; and (2) received by the Division not later than the 20th day after the date of deemed receipt of the ALJ's decision. The Appeals Panel has held that both portions of Rule 143.3(d) must be complied with for an appeal to be timely. Appeals Panel Decision (APD) 042688, decided December 1, 2004.

Records of the Division reflect that the ALJ's 10-day letter and decision were mailed on May 23, 2017, and June 23, 2017, respectively, to the claimant at (address 1), (city), Texas. Assuming the decision was mailed to the claimant's correct address, pursuant to Rule 102.5(d), the claimant would be deemed to have received the ALJ's decision 5 days later on June 28, 2017. With the deemed date of receipt of the ALJ's decision on June 28, 2017, in accordance with Section 410.202, excluding Saturdays and Sundays and holidays listed in Section 662.003, the claimant's appeal would have to have been filed or mailed no later than July 20, 2017.

The claimant's request for review is dated August 7, 2017, and was sent to and received by the Division via facsimile transmission on that date. Therefore, the claimant filed what would appear to be an untimely appeal; however, records of the Division reflect that the ALJ's 10-day letter and decision were mailed to the claimant at an incorrect address. Attached to the claimant's appeal is a copy of the claimant's Employee's Claim for Compensation for a Work-Related Injury (DWC-41) filed on April 18, 2017, and listing the claimant's address as (address 2), (city), Texas rather than (address 1), (city), Texas, the address contained in the Division's records as of June 2017. Because the ALJ's decision was not mailed to the claimant's correct last known address, the claimant is not deemed to have received a copy of the decision. We therefore hold, under the facts of this case, that the deadline for filing an appeal prescribed in Section 410.202 was not triggered.

In APD 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, a claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel remanded the case to the ALJ to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In this case, the claimant makes factual allegations that if true, could constitute a basis for the claimant's failure to attend the May 22, 2017, CCH and to respond to the ALJ's 10-day letter dated May 23, 2017. Accordingly, because the 10-day letter and the ALJ's Decision and Order were not mailed to the claimant's correct last known address, we reverse the ALJ's determinations that the claimant did not sustain a compensable injury on (date of injury); that the claimant's horseplay was not a producing cause of the claimed injury and the carrier is not relieved of liability for compensation; that the claimed injury was not caused by the claimant's willful intention and attempt to injure himself and the carrier is not relieved of liability for compensation; that the claimed injury did not arise out of an act of a third person intended to injure the claimant because of personal reasons not related to the employment and the carrier is not relieved of liability for compensation; and that the claimant did not have disability resulting from the claimed injury and we remand this case to the ALJ to allow the claimant to present evidence concerning whether he had good cause for his failure to appear at the CCH on May 22, 2017, and to present evidence relevant to the disputed issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge